IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.367 OF 2005

Rekha Ashok Kankale & Anr. ... Petitioners

V/s.

Naseembi Hanif Sayyed & Anr. ... Respondents

Mr.Y.J. Master for Petitioners
Mr.A.A. Kumbhakoni with A.P. Kulkarni for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 5, 2005**

P.C.:

. The Petitioners have challenged the orders of both the Courts below. The Suit filed by the Respondents has been partly decreed. The Petitioners were directed to pay the arrears of rent amounting to Rs.24,600/-. However, possession of the suit premises was denied to the Respondents. The trial Court came to the conclusion that the Petitioners had failed to prove the relationship between themselves and the Respondents as licensee and licensor respectively.

2. An appeal was preferred by the petitioners. Cross objections were filed by the Respondents, essentially claiming possession of the suit premises. The appellate Court allowed the appeal partly by

modifying the amount payable by the Petitioners to Rs.21,600/-. The cross objections filed by the Respondents were allowed and the Petitioners were directed to deliver vacant and peaceful possession of the suit premises.

3. It is the contention of the Petitioners who were the defendants before the trial Court, that cross objections were not served on them. However, a perusal of the certified copy of the cross objections which are produced today by the respondents shows that the cross objections were served on the Petitioners and they were given an opportunity to rebutt the same. The certified copy of the written arguments made on behalf of the Petitioners indicates that the cross objections were replied and dealt with by the Petitioners.

4. A submission is made by the learned advocate for the Petitioners that the tenancy has not been terminated by the notice of 9.12.1999 and instead the notice issued was a demand of licence fees and therefore, there was no compliance of the conditions under section 12(3) of the Bombay Rent Act. Reliance is placed on the judgment of this Court in *Hajrabi abdul Gani v/s. Abdul Latif Azizulla & Anr.,* **AIR 1996 BOMBAY 192.** In my view, the appellate Court has rightly considered the relationship

between the Petitioners and respondents is one of tenant and landlord and, therefore, the notice issued on 9.12.1999 is a notice of demand as required under section 12(2). I see no infirmity in the order of the Courts below. Hence, Petition dismissed.

5. The ad-interim Stay granted by the lower Appellate Court is extended for four weeks provided the amount as decreed is deposited in this Court within that time.